

TITLE 16
BUREAU OF AUTOMOTIVE REPAIR

**NOTICE OF PROPOSED REGULATORY ACTION
AND PUBLIC HEARING CONCERNING
THE CONSUMER ASSISTANCE PROGRAM VEHICLE RETIREMENT
OPTION ELIGIBILITY**

NOTICE IS HEREBY GIVEN that the Department of Consumer Affairs (DCA), Bureau of Automotive Repair (Bureau) is proposing to take the action described in the Informative Digest. No public hearing has been scheduled. Any interested person, or his or her duly authorized representative, may request, in writing, a public hearing pursuant to subdivision (a) of Section 11346.8 of the Government Code. A request for hearing must be received by the Bureau contact person designated below not less than 15 days prior to the close of the written comment period.

Any interested person, or his or her duly authorized representative, may submit written statements or arguments relevant to the proposed action. Written comments, including those sent by mail, facsimile, or e-mail must be sent to the addresses listed under Contact Person in this Notice. **All written comments must be received by the Bureau at its office not later than 5:00 p.m. on February 25, 2008. Comments sent to persons or addresses other than those specified under Contact Person, or received after the date and time specified above, regardless of the manner of transmission, will be included in the record of this proposed regulatory action, but will not be summarized or responded to.**

The Bureau, upon its own motion or at the instance of any interested party, may thereafter formally adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit oral or written testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE:

Pursuant to the authority vested by Sections 44001.3, 44001.5 and 44002 of the Health and Safety Code and Section 9882 of the Business and Professions Code, and to implement, interpret or make specific Sections 44005, 44010.5, 44011, 44012, 44014.7, 44015, 44017, 44017.1, 44037.1, 44062.1, 44091, 44092, 44093, 44094 and 44095 of the Health and Safety Code; the Bureau is proposing to adopt the following changes to Article 11 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Bureau, located within DCA, is the state agency charged with the administration and implementation of the Smog Check Program (Program). The Program is designed to reduce emissions from mobile sources such as passenger vehicles and trucks by requiring that these vehicles meet specific in-use emissions standards as verified by periodic inspections. To ensure uniform and consistent vehicle testing, the BAR licenses Smog Check stations and technicians and certifies inspection equipment.

Air pollution contributes to respiratory health problems. Asthma is the most prevalent chronic disease among California children. According to a UCLA Center for Health Policy Research study published in 2003¹, one in six California children suffer asthmatic symptoms annually. Data from a 2006 report by the American Lung Association®² suggest that 2.3 million Californians suffer from this debilitating disease.

The Bureau is also charged with the implementation and administration of the Consumer Assistance Program (CAP), which includes both a Repair Assistance (RA) option and a Vehicle Retirement (VR) option. Health and Safety Code section 44100 authorizes DCA to offer, as a part of CAP, a VR option made available entirely on a voluntary basis for consumers whose vehicles have outlived their cost-effectiveness for continued repairs.

The purpose of the VR option is to:

- Provide eligible consumers with the voluntary option of retiring their vehicles that have failed a biennial Smog Check inspection, or a Smog Check inspection subsequent to being issued a notice to correct for an alleged smog-related violation.
- Encourage greater low-income consumer participation in the VR option because owners of high emitting vehicles are predominantly of a lower-income bracket and cannot afford to purchase newer lower-emissions vehicles.
- Achieve the emissions reduction objectives established in the SIP and help the Program meet equivalency with federal regulatory standards.

Other conditional requirements for participation in the VR option include that the individual is one or both of the following:

1. The owner of a motor vehicle that has failed a Smog Check inspection.
2. The owner of a motor vehicle who was issued a notice to correct for an alleged violation of Section 27153 or 27153.5 of the Vehicle Code involving that vehicle, if the vehicle subject to that notice has failed a Smog Check inspection subsequent to receiving the notice.

¹ YY Meng, SH Babey, E Malcolm, ER Brown, and N Chawla. *Asthma in California: Findings from the 2001 California Health Interview Survey*. Los Angeles: UCLA Center for Health Policy Research, 2003.

² *American Lung Association State of the Air: 2006*, American Lung Association®, April 27, 2006.

DCA is required to offer a VR option, funded by the High Polluter Repair or Removal Account created pursuant to subdivision (a) of Section 44091. Funds available pursuant to paragraph (1) of subdivision (d) of Section 44091 shall be used to purchase and retire mobile source emission reduction credits resulting from the retirement of light-duty vehicles for the purpose of achieving the emission reductions required by the State Implementation Plan (SIP).

Current Regulation:

Existing regulations in the California Code of Regulations, Title 16, Division 33, Chapter 1, Article 11, are summarized as follows:

1. Section 3394.4 specifies the various requirements that must be met by applicants and their vehicles in order to be eligible for CAP participation. In particular, subsection (c) specifies the conditions that a vehicle must meet in order to qualify for the VR option. Those conditions include having failed a biennial Smog Check inspection within 120 days after the vehicle's most current renewal of registration with DMV, provided the registration renewal date is not more than 120 days prior to the postmarked date on the application. [Paragraphs (4) and (6) of subsection (c)].

Effect of Regulatory Action:

This proposed regulatory action seeks to increase participation in the VR option of CAP. This will be accomplished by increasing the number of days a consumer may apply for the option after the expiration of their vehicle's most current renewal of registration with the Department of Motor Vehicles (DMV) from one hundred twenty (120) days to one hundred eighty (180) days and increasing the number of days a consumer may apply for the option, based on the registration renewal date from 120 days to 180 days prior to the postmarked date on the application.

The proposal seeks to reduce air pollution caused by high emitting vehicles. Reducing emissions from high emitting vehicles helps to improve California's air quality and assists the state in meeting its federal clean air goals.

The proposed action will make the following changes to existing regulation:

1. Amend paragraphs (4) and (6) of subsection (c) of Section 3394.4 to increase from 120 days to 180 days, the time frame applicable to the vehicle's most current renewal of registration with DMV and the postmarked date of the CAP application.

Expanding the number of days after the most current registration with the DMV provides a greater window of opportunity for the consumer to participate, accomplishing three objectives: 1) to offer the VR option to a greater portion of California motorists; 2) to reduce the number of high emitting vehicles on the California roads; and 3) to improve air quality in California. Expanding the number of days prior to the postmarked date on the application for the VR option makes the regulation clear and consistent.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

Nondiscretionary Costs/Savings to Local Agencies:

None.

Local Mandate:

None.

Costs to Any Local Agency or School district for Which Government code Section 17561 Requires Reimbursement:

None.

Businesses Impact:

The Bureau has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination:

Increasing the allowable amount of time between a vehicle's most current renewal of registration with DMV and the postmarked date on the application will help more consumers become eligible to participate in the VR option. Dismantlers will actually receive additional vehicles through this proposed change. This will result in an additional amount of administrative cost reimbursement from CAP, as well as additional revenue from the sale of salvage materials resulting from the additional vehicles being retired.

Impact on Jobs/New Businesses:

The Bureau has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The Bureau is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs:

None.

Effect on Small Business:

The Bureau has determined that the proposed regulations would affect small businesses.

CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Bureau has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Bureau at 10240 Systems Parkway, Sacramento, California 95827.

**AVAILABILITY AND LOCATION OF THE RULEMAKING FILE
AND THE FINAL STATEMENT OF REASONS**

All the information upon which the proposed regulations are based is contained in the rulemaking file that is available for public inspection by contacting the Bureau at the address mentioned above.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Web site listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed administrative action may be addressed to:

Debbie Stefan
Bureau of Automotive Repair
10240 Systems Parkway
Sacramento, CA 95827
Telephone: (916) 255-4585
Fax No.: (916) 255-1369
E-mail: debbie_stefan@dca.ca.gov

The backup contact person is:

Kathy Runkle
Bureau of Automotive Repair
10240 Systems Parkway
Sacramento, CA 95827
Telephone: (916) 255-4300
Fax No.: (916) 255-1369

WEB SITE ACCESS

Materials regarding this proposal can also be found on the Bureau's Web site at www.smogcheck.ca.gov.